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8 **KAMALJIT SINGH KHERA**

9

10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 KAMALJIT SINGH KHERA,

17 Defendant.

18) Case No. CR-S-03-103-FCD

19))

20) **MOTION AND ORDER TO CONTINUE**

21) **SENTENCING**

22) **[U.S.C. Fed. Crim. Proc. R. 32; Local**

23) **Crim. R. 32-460(i)]**

24) Date: December 2, 2005

25) Time: 9:00 a.m.

26) Hon. Frank C. Damrell

27))

28) “AS MODIFIED”

29

30 Pursuant to U.S.C. Federal Rules of Criminal Procedure rule 32(b)(2) and Local Rule

31 32-460(i), Defendant hereby moves the Court to continue his sentencing scheduled for

32 December 2, 2005 to January 30, 2006 and allow Defendant to file his reply to the

33 government’s opposition on January 9, 2006.¹ The ends of justice are served by granting a

34 continuance because Defendant requires additional time to effectively reply to the

35 government’s oppositions to Defendant’s sentencing memoranda.

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37

38 ¹ This Court’s clerk notified the defense that January 30, 2006 at 9:00 a.m. is an available date and time for
39 sentencing in this matter.

1 Pursuant to a briefing schedule created by the parties, Defendant filed a public
2 sentencing memorandum and a sealed sentencing memorandum on or about September 6, 2005.
3 The government filed a public opposition to Defendant's memorandum on September 26, 2005.
4 On or about September 26, 2005, Defendant granted the government an extension to file its
5 opposition to Defendant's sealed sentencing memorandum. Importantly, defense counsel told
6 the government that it could not respond to the public sentencing memorandum until it had
7 reviewed the government's sealed opposition.

8 On October 13, 2005, the government filed a sealed opposition to Defendant's motion
9 for a sentence reduction pursuant to U.S.S.G. § 5K1.1. Attached to the government's sealed
10 opposition were declarations of Special Agents Robinson and Ferris. The government advised
11 defense counsel that it would allow the defense adequate time to respond to its oppositions.

12 Based on the government's 31 page sealed opposition and 48 pages of exhibits, the
13 defense had to conduct additional investigations. These investigations are not yet complete.² In
14 addition, Defendant did not know that the government intended on filing the declarations of
15 two special agents as exhibits to its opposition. In the declarations the agents make certain
16 averments that compelled the defense to initiate certain investigations. The defense has not
17 completed these investigations.³

18 Defendant respectfully requests a continuance of his sentencing so he may reply to the
19 government's oppositions. Defendant also requests that the matter be taken off the Court's
20 December 2, 2005 calendar. Good cause for the continuance is demonstrated in the attached
21 declaration.

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25 ² The defense's private investigator is Robert Storey.

³ The defense informed the government that its investigation includes, but is not limited to, a videotape of a government informant.

1 Dated: November 29, 2005

2 Respectfully submitted,

3 /s/ Johnny L. Griffin, III
4 JOHNNY L. GRIFFIN, III
5 Attorney for Defendant
6 KAMALJIT SINGH KHERA

7 **ORDER**

8 Based on the declaration of defense counsel, review of the Government's
9 Opposition and the reply of the defendant, the Court finds that good cause exists therein,
10 and hereby finds that the ends of justice are served by the granting of such continuance.

11 The Court hereby continues Defendant's the non-evidentiary sentencing hearing
12 from December 2, 2005 until January 30, 2006 at 9:30 a.m.

13
14 **IT IS SO ORDERED.**

15
16 Dated: December 1, 2005

17 /s/ Frank C. Damrell Jr.
18 HON. FRANK C. DAMRELL JR.
19 United States District Judge